

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings ~~((before the public employment relations commission))~~ relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the ~~((commission. The provisions of this chapter should be read in conjunction with the provisions of:~~

~~(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-010 Impasses in contract negotiations—Request for contract mediation—Filing and service. A request for contract mediation may be ((made)) filed through the agency's online e-filing system, by email, or in writing ((, by electronic telefaesimile transmission, or by telephone, but shall be confirmed in writing if made by telephone. The original request shall be submitted to the commission's)) to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ((submitted)) filed jointly, the party ((submitting)) filing the request shall serve a copy((, as required by WAC 391-08-120 (3) and (4),)) on the other party to the dispute, as required by WAC 391-08-120 (3) and (4). The party or parties requesting contract mediation shall provide the following ((information)) to the agency:

(1) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative.

(2) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative.

(3) ~~((The employer's principal business.~~

- ~~(4))~~ The parties' contractual relationship, indicating that:
 - (a) The parties ~~((1))~~ have never had a contract; or
 - (b) The parties have had a contract, and a copy of the current or most recent ~~((applicable))~~ collective bargaining agreement is attached.
- ~~((5))~~ (4) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions))~~.
- ~~((6))~~ (5) The number of employees in the bargaining unit.
- ~~((7) The history of the bargaining unit, including at least the approximate date of its creation.~~
- ~~(8))~~ (6) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting, and whether both parties concur in the request for mediation.
- ~~((9))~~ (7) Identification of the issues in dispute ~~((and the parties' positions on those issues))~~.
- ~~((10))~~ (8) The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).
- (9) Any other information requested in the contract mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-020 Grievance mediation—Request for grievance mediation—Filing and service. A request for appointment of a grievance mediator may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing ~~((or by electronic telefacsimile transmission. The original request shall be submitted))~~ to the ~~((commission's))~~ agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing the request shall serve a copy ~~((, as required by WAC 391-08-120 (3) and (4),))~~ on the other party to the collective bargaining agreement under which the dispute arises, as required by WAC 391-08-120 (3) and (4). The party or parties requesting grievance mediation shall provide the following ~~((information))~~ to the agency:

- (1) Information identifying the parties to the dispute, including:
 - (a) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative;
 - (b) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative;
 - (c) ~~((The employer's principal business;~~
 - ~~(d))~~ A copy of the current or most recent applicable collective bargaining agreement;

~~((e))~~ (d) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions;~~

~~(f) The number of employees in the bargaining unit;~~

~~(g) The agreement of the party or parties making the request that any unresolved issues shall be submitted to an arbitrator for a final and binding decision; and~~

~~(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to grievance mediation).~~

(2) Identification of the grievance to be resolved in grievance mediation.

(3) ~~((Designation of the request as:~~

~~(a) A request for appointment of a member of the agency staff as grievance mediator; or~~

~~(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.~~

~~(4))~~ The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).

(4) Any other information requested in the grievance mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-55-030 Assignment of mediator. (1) Upon submission of a request under WAC 391-55-010 or 391-55-020 ~~((3)(a))~~, a member of the agency staff ~~((shall))~~ will be assigned as mediator at the discretion of the executive director. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request ~~((shall))~~ will be considered in making the assignment.

(2) ~~((Upon submission of a request for a list under WAC 391-55-020 (3)(b), names shall be referred and a grievance mediator shall be selected under WAC 391-55-120.))~~ For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), if an agreement has not been reached by June 1st of the year in which negotiations occurred, a mediator will be preassigned. The parties are encouraged to meet with the mediator as soon as practicable. For bargaining units eligible for interest arbitration under RCW 47.64.300, the parties may still mutually agree to waive mediation under RCW 47.64.230.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-032 Special provision—Educational employees. Upon submission of a unilateral request for mediation, the executive director shall consider the position of the other party (~~(other than the party making the request,)~~) and (~~(shall)~~) evaluate whether the parties have exchanged and considered (~~(the)~~) one another's proposals (~~(of one another)~~) and whether the intervention of the agency will have a beneficial impact on the negotiating process. (~~(Prior to)~~) Before making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the (~~(commission)~~) agency by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-050 Submission of written proposals. Parties requesting the agency's mediation services (~~(of the agency)~~) are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute as well as any written material supporting the identified proposals.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-070 Function of mediator. The mediator (~~(shall)~~) may meet with the parties or their representatives, or both, either jointly or separately, and (~~(shall)~~) may take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-090 Confidential nature of mediation. Mediation meetings (~~(shall not be)~~) are not open to the public. Confidential information acquired by a mediator (~~(shall)~~) must not be disclosed to others outside of the mediation process for any purpose, and a media-

tor (~~shall~~) may not give testimony about the mediation in any legal or administrative proceeding.

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-55-200 Interest arbitration—Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(~~(+7)~~) (14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that (~~his or her~~) further efforts will not result in an agreement, the following procedure (~~shall~~) will be implemented:

(a) The mediator shall notify the parties of (~~his or her~~) the mediator's intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and (~~serve on~~) the other party a written list (including article and section references to the parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (~~(+2)~~) (4)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration (~~shall~~) must be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward (~~his or her~~) a recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496 and within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel((7)) and shall notify the opposite party and the executive director of the name, email address, mailing address, and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later-appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators (~~shall be~~) is deemed waived if neither party has notified the executive director of its appointee within (~~fourteen~~) 14 days following the issuance of a certification of issues for interest arbitration, and the parties' (~~principal~~) representatives shall then select the neutral chairperson.

(2) A party (~~which~~) that has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson. (1) For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496, if the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve((7)) and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the (~~commission~~) agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and (~~shall~~) may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the (~~commission~~) agency. Upon the submission of a request (~~in compliance with this subsection~~), the executive director shall appoint a neutral chairperson from the (~~commission~~) agency staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall (~~proceed forthwith to~~) request a panel of at least five arbitrators specifying(~~ing~~) that the request

is for interest arbitration proceedings under RCW 41.56.450.~~(())~~ Referrals and selection from the public employment relations commission's dispute resolution panel ~~((shall be))~~ must be made as provided in WAC ~~((391-55-120))~~ 391-75-020. Referrals and selection from other panels ~~((shall))~~ must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within ~~((twenty-eight))~~ 28 days after certification of issues under WAC 391-55-200, the parties ~~((shall be))~~ are deemed to have waived the procedures in subsections (1) through (3) of this section. The ~~((executive director))~~ agency shall issue a list of dispute resolution panel members and the neutral chairperson ~~((shall))~~ must be selected as provided in WAC ~~((391-55-120))~~ 391-75-020 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

NEW SECTION

WAC 391-55-211 Special provision—Interest arbitration—Selection of neutral chairperson for state. (1) Preceding the commencement of negotiations for bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process is specified by law or has been mutually agreed upon by the parties:

(a) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve and shall notify the executive director of the identity of the chairperson.

(b) If the parties agree to have the agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under RCW 41.56.450. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must be made under the rules of the agency supplying the list

of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after February 1st of each even-numbered year, or requested an extension of time to complete the selection process, the parties are deemed to have waived the procedures in (a) through (c) of this subsection. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information must be transmitted to the executive director within 30 days of it being finalized.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings (~~shall~~) must be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, (~~shall be~~) is deemed to have waived its right to object.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least (~~fourteen~~) 14 days before the date of the hearing, or no later than the next business day after the issuance of the certification if the date between certification and hearing is less than 14 days, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties (~~shall not be~~) are not entitled to submit issues (~~which~~) that were not among the issues certified under WAC 391-55-200.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing. (1) The neutral chairperson may, upon (~~his or her~~) the chairperson's own motion or upon request of a party, convene a prehearing conference (~~or conferences~~).

(a) The purpose (~~or purposes~~) of a prehearing conference (~~include~~) is to consider any one or more of the following:

(i) Simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents, which will avoid unnecessary proof;

(iii) Limitations on the number and consolidation of the examination of witnesses;

(iv) Procedural matters;

(v) Distribution of written testimony and exhibits to the parties prior to the hearing; and

(vi) (~~Such~~) Any other matters (~~as~~) that may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or other electronic means at a time and (~~place~~) location specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference (~~7~~) and the agreements made by the parties concerning all of the matters considered. If no objection is filed within (~~ten~~) 10 days after the date that the order is (~~mailed~~) issued, (~~it shall~~) the order controls the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and (~~shall~~) provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon (~~his or her~~) the chairperson's own initiative. The parties may waive oral hearing by written agreement.

(a) A (~~tape~~) recording of the hearing (~~shall~~) must be taken and (~~shall be~~) is the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties (~~shall~~) must have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party (~~shall~~) does not preclude another member of the same organization or firm from presenting the case at the hearing.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-230 Interest arbitration—Order of proceedings and evidence. The order of presentation at the hearing (~~shall~~) must be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson (~~shall be~~) is the judge of the relevancy of the evidence. All evidence (~~shall~~) must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit (~~shall~~) must be submitted to the neutral chairperson and copies (~~shall~~) must be provided to the partisan arbitrators and to the other parties. The exhibits (~~shall~~) must be retained by the neutral chairperson until an agree-

ment has been signed or until any judicial review proceedings have ~~((been))~~ concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that ~~((he or she))~~ the chairperson may deem to be material.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party. The neutral chairperson may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute ~~((shall))~~ may not be made solely on the default of a party, and the neutral chairperson ~~((shall))~~ may require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson ~~((shall))~~ will declare the hearing closed after the parties have completed presenting ~~((their))~~ any testimony ~~((and/or))~~ or exhibits and submission of briefs or closing arguments within ~~((agreed))~~ the time limits as mutually agreed upon.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-245 Interest arbitration—Award. The rulings and determination of the neutral chairperson ~~((shall be))~~ are controlling~~((r))~~ and ~~((shall))~~ do not require concurrence~~((r))~~ but may be accompanied by ~~((the))~~ any concurring ~~((and/or))~~ or dissenting opinions of the partisan arbitrators. The rulings and determinations ~~((shall not be))~~ are not subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-255 Interest arbitration—Expenses of arbitration.

Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member (~~((of the arbitration panel))~~), if any. The expenses of witnesses (~~((shall))~~) must be paid by the party producing them. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording or transcription of the proceedings, (~~((shall))~~) must be shared equally between the parties. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of (~~((tapes for a tape))~~) a recording of the proceedings but not a transcription or the services of a court reporter, (~~((shall))~~) must be paid by the (~~((commission))~~) agency.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings.

(1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations (~~((and/or))~~) or mediation or both. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed (~~((illegality))~~) nonmandatory subject of bargaining, the objecting party must file (~~((and process))~~) a complaint charging unfair labor practices under chapter 391-45 WAC (~~((prior to))~~) before the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the (~~((the))~~) collective bargaining (~~((the))~~) obligations imposed by RCW 41.56.030(4) must file (~~((and process))~~) a complaint charging unfair labor practices under chapter 391-45 WAC (~~((prior to))~~) before the conclusion of the interest arbitration proceedings.

(c) If a (~~((preliminary ruling))~~) cause of action statement is issued under WAC 391-45-110 (~~((that an unfair practice violation could be found on))~~) for a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint (~~((shall))~~) must be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section (~~((shall))~~) must be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that (~~((the))~~) any suspended issue (~~((or issues was/were))~~) was unlawfully advanced or affected by unlawful conduct, the (~~((issue or issues shall))~~) issue(s) must be stricken from the certification issued under WAC 391-55-200, and the party advancing the

proposal (~~shall~~) is only (~~be~~) permitted to advance (~~such~~) modified proposals (~~as~~) that are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that (~~the~~) any suspended issue (~~or issues was/were~~) was lawfully advanced, the suspension under this section (~~shall~~) must be terminated and the (~~issue or issues shall~~) issue(s) must be remanded to the interest arbitration panel for ruling on the merits.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-300 Fact-finding. If a dispute has not been settled after bilateral negotiations and mediation, (~~either~~) fact-finding may be initiated. A party may request the appointment of a fact finder by giving written notice to the (~~commission~~) agency, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of (~~ten~~) 10 days of mediation must have elapsed. The parties may, by agreement made at any time (~~prior to~~) before the appointment of a fact finder, extend the period for mediation or (~~place in the hands of~~) authorize the mediator (~~the determination of~~) to determine when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding (~~shall~~) must be initiated if resolution is not reached through mediation by (~~one hundred~~) 100 days beyond the expiration date of a contract previously negotiated under that chapter or (~~one hundred~~) 100 days from the initiation of mediation if no such contract exists.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-310 Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, (~~the executive director shall furnish a list of members of the dispute resolution panel, and~~) the parties shall meet within seven days (~~following receipt of the list,~~) to attempt to select a fact finder. (~~Names shall be referred and any fact finder shall be selected under WAC 391-55-120.~~)

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and (~~shall~~) notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder within seven days, they shall immediately notify the executive director.

(~~(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).~~)

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder ~~((shall))~~ must be a member of the ~~((commission))~~ agency staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and ~~((shall))~~ may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the ~~((commission))~~ agency.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the ~~((commission))~~ agency staff or ~~((may be))~~ a member of the agency's dispute resolution panel ~~((established in WAC 391-55-120))~~.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings ~~((shall))~~ must be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party ~~((who))~~ that proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and ~~((who))~~ that fails to state its objection in writing ~~((, shall be))~~ is deemed to have waived its right to object.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties ~~((shall not be))~~ are not entitled to submit issues ~~((which))~~ that were not among the issues mediated under WAC 391-55-070.

NEW SECTION

WAC 391-55-321 Fact-finding prehearing conference. The fact finder may, upon the fact finder's own motion or upon request of a party, convene a prehearing conference.

(1) The purpose of a prehearing conference is to consider any one or more of the following:

(a) Simplification of issues;

(b) Identification of evidence or supporting documentation that either one party or both may be required to bring to the hearing;

(c) Limitations on the number and consolidation of the examination of witnesses;
(d) Procedural matters; and
(e) Any other matters that may aid in the disposition or settlement of the case.
(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the fact finder.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time, and place for a hearing. The fact-finding hearing (~~(shall be)~~) is open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon (~~his or her~~) the fact finder's own initiative. The parties may waive oral hearing by written agreement.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing (~~(shall)~~) must be as agreed by the parties or as determined by the fact finder. The fact finder (~~(shall be)~~) is the judge of the relevancy of the evidence. All evidence (~~(shall)~~) must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit (~~(shall)~~) must be submitted to the fact finder and copies (~~(shall)~~) must be provided to the other parties. The exhibits (~~(shall)~~) must be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party (~~who~~) that, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations (~~(shall)~~) may not be made solely on the default of a party, and the fact finder (~~(shall)~~) may require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-340 Closing of fact-finding hearings. The fact finder (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any testimony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-345 Findings of fact and recommendations. Within (~~thirty~~) 30 days after (~~his or her~~) appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder (~~shall not be~~) are not subject to appeal to the commission. Fact finders (~~shall~~) may rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties(~~r~~) and (~~shall~~) may not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-350 Responsibility of parties after fact-finding. The parties are entitled to consider the fact finder's recommendations privately(~~r~~) before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings of fact and recommendations have been issued, the parties shall notify the (~~commission~~) agency and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within (~~ten working~~) 10 days after the findings of fact and recommendations have been issued, the parties shall notify the (~~commission~~) agency and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses ((shall)) must be paid by the party producing them. The fees and expenses of a fact finder ((shall)) must be paid as follows:

(1) A fact finder appointed by the ((commission)) agency from the ((commission)) agency staff under WAC 391-55-310 (2)(a) ((shall)) must be paid by the ((commission)) agency.

(2) A fact finder selected from the dispute resolution panel or some other source ((shall)) must be paid by the parties, in equal shares.

NEW SECTION

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response,

which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-55-002	Sequence and numbering of rules—Special provisions.
WAC 391-55-071	Special provision—State patrol personnel.
WAC 391-55-0715	Special provision—Public employees.
WAC 391-55-072	Special provision—Educational employees.
WAC 391-55-110	Dispute resolution panel—Membership.
WAC 391-55-120	Dispute resolution panel—Referral and selection procedures.
WAC 391-55-130	Disclosure.
WAC 391-55-150	Vacancies.
WAC 391-55-201	Special provision—Certification of issues—Public employees.
WAC 391-55-202	Special provision—Certification of issues—Educational employees.